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IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

**STATE OF CALIFORNIA, by and through
 Attorney General Xavier Becerra;
 COUNTY OF LOS ANGELES; CITY OF
 LOS ANGELES; CITY OF FREMONT;
 CITY OF LONG BEACH; CITY OF
 OAKLAND; CITY OF STOCKTON,**

Plaintiffs,

v.

**WILBUR L. ROSS, JR., in his official
 capacity as Secretary of the U.S.
 Department of Commerce; U.S.
 DEPARTMENT OF COMMERCE; RON
 JARMIN, in his official capacity as Acting
 Director of the U.S. Census Bureau; U.S.
 CENSUS BUREAU; DOES 1-100,**

Defendants.

3:18-cv-01865

**PLAINTIFFS' OPPOSITION TO
 DEFENDANTS' MOTION IN LIMINE**

Dept: 3
 Judge: The Honorable Richard G.
 Seeborg
 Trial Date: January 7, 2019
 Action Filed: March 26, 2018

Plaintiffs¹ respectfully submit the following Opposition to Defendants' Motion in Limine.²

INTRODUCTION

Defendants seek to exclude Plaintiffs' newly disclosed fact witnesses from testifying at trial, yet Defendants provide no particular reason why those witnesses' testimony will be prejudicial. In fact, as explained below, inclusion of those civil servants' straightforward, non-controversial testimony about their job duties and their uses of census data will not harm Defendants in any way. And by presenting those witnesses' trial testimony via declaration, Plaintiffs have ensured that their addition will not disrupt the trial and that Defendants will be able to review their complete initial direct testimony well before trial commences.

Defendants also seek to admit the administrative record, and exclude any evidence outside that record. While Plaintiffs agree that the *complete* administrative record should be admitted, Defendants provide no basis for excluding extra-record evidence. As detailed below, extra-record evidence is relevant and admissible not only to establish Plaintiffs' standing and in support of their Enumeration Clause claim, but also to demonstrate a violation of the Administrative Procedure Act.

For the reasons explained below, the Court should (1) deny Defendants' motion to exclude witnesses Amy Bodek and Andrew Westall; (2) admit the complete administrative record; and (3) deny Defendants' motion to exclude evidence outside the administrative record.

ARGUMENT

I. PLAINTIFFS' NEWLY DISCLOSED FACT WITNESSES SHOULD NOT BE EXCLUDED.

The Court should deny Defendants' motion to exclude fact witnesses Amy Bodek, Director of Department of Planning for the County of Los Angeles, and Andrew Westall, Assistant Chief Deputy of the Office of Los Angeles City Council President Herb J. Wesson, Jr., because

¹ Plaintiffs are the State of California, County of Los Angeles, and Cities of Los Angeles, Fremont, Long Beach, Oakland and Stockton, as well as intervenor Los Angeles Unified School District (LAUSD).

² This Opposition is brought solely on behalf of Plaintiffs in the present matter. Plaintiffs do not join in the separate opposition to Defendants' motion in limine brought by the plaintiffs San Jose/BAJI in the related case, *City of San Jose v. Ross*, No. 3:18-cv-02279-RS (N.D. Cal.).

1 Defendants have not demonstrated that they will be prejudiced by the inclusion of those
2 witnesses.

3 Although Federal Rule of Civil Procedure 37(c)(1) provides for exclusion sanctions for
4 untimely disclosures under Rule 26(a) or (e), the Ninth Circuit has recognized that “evidence
5 preclusion is, or at least can be, a ‘harsh’ sanction.” *R & R Sails, Inc. v. Ins. Co. of Pa.*, 673 F.3d
6 1240, 1247 (9th Cir. 2012) (quoting *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101,
7 1106 (9th Cir. 2001)). Parties may use late-disclosed witnesses to supply evidence where the late
8 disclosure is “substantially justified” or “harmless.” Fed. R. Civ. P. 37(c)(1). In determining
9 whether to preclude the introduction of evidence under Rule 37, courts consider “(1) the surprise
10 to the party against whom the evidence would be offered; (2) the ability of that party to cure the
11 surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance
12 of the evidence, and (5) the nondisclosing party’s explanation for it[s] failure to disclose the
13 evidence.” *S.F. Baykeeper v. W. Bay Sanitary Dist.*, 791 F. Supp. 2d 719, 733 (N.D. Cal. 2011)
14 (internal quotation marks omitted).

15 Witnesses Bodek and Westall should not be precluded from testifying at trial under those
16 factors because Defendants have not shown that the inclusion of those witnesses will harm or
17 prejudice them in any way. Plaintiffs have ensured that their appearance will not disrupt the trial
18 because Plaintiffs intend to present their testimony at trial by via declaration. *See* Ex. A, Trial
19 Decl. of Amy Bodek; Ex. B, Trial Decl. of Andrew Westall. As their trial declarations show, this
20 testimony will consist of straightforward, non-controversial assertions from civil servants related
21 to their job duties offered to inform the Court of the ways in which local jurisdictions utilize
22 Defendants’ census data. (*Id.*) Not only does this testimony-by-declaration comport with the
23 Court’s preference for a streamlined trial proceeding, it also allows Defendants to prepare for
24 cross-examination, if so desired.

25 Likewise, Defendants will not be surprised by Bodek’s and Westall’s testimony primarily
26 because Plaintiffs intend to present these witnesses’ testimony at trial via declaration. As their
27 trial declarations show, this testimony consists of facts about how Defendants’ census data is used
28 by two local jurisdictions—a topic about which Defendants are undoubtedly knowledgeable.

1 Having Bodek's and Westall's complete initial direct testimony will permit Defendants to
2 determine whether they wish to cross-examine them at trial and prepare for that cross-
3 examination at trial. To whatever limited extent that Defendants may experience some surprise,
4 that surprise has been mitigated by the production of those witnesses' trial declarations and can be
5 further mitigated by Plaintiffs' willingness to produce those witnesses for deposition or engage in
6 limited discovery regarding the topics of their testimony.

7 Although Defendants assert that they are unable to conduct depositions of these newly
8 disclosed witness, Defendants have not shown how proceeding to trial without deposing them
9 will be harmful. Defendants have not deposed a single one of Plaintiffs' previously disclosed lay
10 witnesses in either this case or the related matter, *City of San Jose v. Ross*, No 3:18-cv-02279-RS
11 (N.D. Cal.). *See Ellis v. J.P. Morgan Chase & Co.*, No. 12-CV-03897 YGR, 2015 WL 9178076,
12 at *8 (N.D. Cal. Dec. 17, 2015) (permitting the testimony of a late-disclosed witness in part
13 because the objecting party failed to depose any other similar witness that had been timely
14 disclosed, which suggested that the objecting party "would also not have deposed [the new
15 witness] even if given the opportunity"). And in the other cases involving the addition of the
16 citizenship question to the 2020 Census, Defendants have not shown that deposing lay witnesses
17 has been or will be necessary for their defense at trial. In *New York v. U.S. Dep't of Commerce*,
18 No. 1:18-cv-02921 (S.D.N.Y.) (the "New York matter"), Defendants did not depose any of the
19 plaintiffs' lay witnesses that the plaintiffs called to testify at trial; for the lay witnesses that
20 Defendants *did* depose, Defendants chose not to use those depositions at trial. And in *LUPE v.*
21 *Ross*, No. 8:18-cv-01570-GJH (D. Md.), and *Kravitz v. U.S. Dep't of Commerce*, No. 8:18-cv-
22 01041 (D. Md.), Defendants have not deposed any of the plaintiffs' identified lay witnesses.
23 Accordingly, Defendants have given no reason to suggest that they will depose Bodek or Westall
24 prior to trial even if they were able to. Defendants thus cannot support their unspecified
25 contention that they will be prejudiced by their asserted inability depose those witnesses.

26 Furthermore, the evidence these witness intend to produce is greatly important because it
27 will materially assist the Court in determining Plaintiffs' standing. Bodek's and Westall's
28 testimony will provide the Court with a more complete picture of the array of uses of census data,

1 extending not just to state governments, but also to jurisdictions and organizations at the county,
2 city, and neighborhood levels. Their testimony will demonstrate how local governments rely on
3 the population count and demographic data at the block-level collected at the decennial census to
4 ensure that local redistricting complies with voting rights laws and basic democratic principles of
5 voting. They will also testify about the wider uses for census data, including ensuring that local
6 services and resources—from social and emergency services to trash pickup—are properly
7 allocated at the neighborhood level. And, their testimony shows how census data is essential for
8 planning purposes in such areas as land use, zoning, housing, economic development, and the
9 environment. Accordingly, Bodek’s and Westall’s testimony about how local jurisdictions use
10 census data is crucial to demonstrate the wider-reaching harm to Plaintiffs caused by the
11 citizenship question and its disruption to the accuracy of the census data on which local
12 jurisdictions rely.

13 Defendants’ delayed response to the disclosure of these witnesses also casts doubt on their
14 unsupported claim of an unspecified prejudice. Upon sending their supplemental disclosure of
15 these witnesses (*see* Defs.’ Mot. in Lim. Ex. A) on December 12, 2018, Plaintiffs notified
16 Defendants that, “To the extent any witness has not been previously identified, Plaintiffs agree to
17 meet and confer regarding related discovery, if necessary.” *See* Pls.’ Witness List (ECF No. 108),
18 at 1. Defendants failed to meet and confer with Plaintiffs and instead waited over a week before
19 notifying Plaintiffs of their objection to these witnesses via the present motion in limine. If they
20 had utilized the proposed meet and confer process, Plaintiffs could have explained in more detail
21 what testimony Bodek and Westall will produce and worked to resolve Defendants’ concerns of
22 prejudice. Instead, Defendants seek to exclude these witnesses from testifying at trial altogether
23 by asserting an unspecific and unsupported claim of prejudice in the present motion.

24 For these reasons, witnesses Bodek and Westall should not be excluded from testifying at
25 trial because their late disclosure will not prejudice Defendants.

26 //

27 //

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II. THE COURT SHOULD ADMIT THE COMPLETE ADMINISTRATIVE RECORD.

Plaintiffs agree with Defendants that the administrative record should be admitted into evidence. But Plaintiffs further assert that the Court should admit the *complete* administrative record.

Under the APA, judicial review is required to be conducted based on the “whole record.” *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419 (1977). Agencies are required to submit the “whole record” including all of the materials before the agency, not merely a subset actually considered by a decision-maker, and not merely the subset that purportedly supports the ultimate decision. *See Walter O. Boswell Mem. Hosp. v. Heckler*, 749 F.2d 788, 792 (D.C. Cir. 1984) (“To review less than the full administrative record might allow a party to withhold evidence unfavorable to its case.”). And where subordinates conducted “work and [made] recommendations of subordinates, those materials should be included as well.” *Amfac Resorts, L.L.C. v. U.S. Dep’t of the Interior*, 143 F. Supp. 2d 7, 12 (D.D.C. 2001) (citing *Bar MK Ranches v. Yuetter*, 994 F.2d 735, 739 (10th Cir. 1993)). “The “whole” administrative record, therefore, consists of all documents and materials directly or indirectly considered by agency decision-makers and includes evidence contrary to the agency’s position.” *Thompson v. U.S. Dep’t of Labor*, 885 F.2d 551, 555 (9th Cir. 1989) (quoting *Exxon Corp. v. Dep’t of Energy*, 91 F.R.D. 26, 33 (N.D. Tex. 1981)).

Here, Defendants’ initial production of administrative record materials consisted of 1320 pages of what they characterized as the record on which the agency rested its decision to add the citizenship question to the 2020 Census. However, that production consisted only of a portion of the documents the agency actually considered in arriving at its decision and omitted a multitude of documents that were before the agency, including materials created during the many months that the Secretary of Commerce sought to add the citizenship question prior to receiving the Department of Justice’s formal request. *See* AR 1–1320. After being ordered to produce a complete administrative record (New York matter, ECF No. 199), Defendants supplemented the administrative record with several more productions. *See* AR 1321–13099; COM_DIS00013892–COM_DIS00020864. Because these supplemental productions contain documents that constitute

1 an important part of the complete administrative record, they should also be admitted along with
 2 Defendants' initial administrative-record production.³ See Joint Pretrial Statement (ECF No. 119),
 3 at 11–12.

4 Presenting a *complete* administrative record is necessary to permit the Court's effective
 5 judicial review under 5 U.S.C. § 706; anything less would permit Defendants to "skew the
 6 'record' for review in [their] favor by excluding from that 'record' information in [their] own files
 7 which has great pertinence to the proceeding in question." *Env'tl. Def. Fund, Inc. v. Blum*, 458 F.
 8 Supp. 650, 661 (D.D.C. 1978); see also *Portland Audubon Soc'y v. Endangered Species Comm.*,
 9 984 F.2d 1534, 1538 (9th Cir. 1998) ("An incomplete record must be viewed as a 'fictional
 10 account of the actual decisionmaking process.'") (quoting *Home Box Office, Inc. v. FCC*, 567
 11 F.2d 9, 54 (D.C. Cir. 1977)).

12 For these reasons, the Court should admit the *complete* administrative record.

13 **III. THE COURT SHOULD DENY DEFENDANTS' MOTION TO EXCLUDE EVIDENCE** 14 **OUTSIDE THE ADMINISTRATIVE RECORD.**

15 Defendants' argument that extra-record evidence should be excluded as irrelevant is both
 16 incorrect and contrary to the Court's prior rulings on this matter. The Court has already ordered
 17 and affirmed the taking of extra-record discovery in this matter. Order Granting Request to
 18 Conduct Discovery Outside the Administrative Record, ECF No. 76; see also New York matter,
 19 ECF No. 199 (order authorizing extra-record discovery); New York matter, ECF No. 405 ("[T]he
 20 Court's decision to authorize extra-record discovery was, and remains, well founded."). And, the
 21 Court has also asserted that it will resolve the question about the evidentiary basis for a ruling on
 22 Plaintiffs' claims at trial. Order Den. Mots. for Summ. J. and Partial Summ. J. (ECF No. 114), at
 23 9 ("The scope of [evidentiary] review remains to be resolved at trial."). That determination about
 24 the consideration of extra-record evidence is similar to the approach of the court in the New York
 25 matter, which allowed for the admission of extra-record evidence at trial: "I will allow the [extra-
 26 record] evidence to be admitted at trial . . . but I will reserve judgment on whether and to what

27 _____
 28 ³ Plaintiffs reserve the right to move that additional materials be considered part of the
 administrative record in this action.

1 extent I can or should consider that evidence.” Ex. C, New York matter, Conference Tr. (Nov. 1,
2 2018), at 12, adopted by Minute Order (ECF No. 459).

3 Therefore, the best and most efficient way to proceed at present is to permit the admission
4 of extra-record evidence along with the administrative record at trial, and then for the Court to
5 decide at the conclusion of trial the evidentiary basis for its decision on Plaintiffs’ APA claim.
6 *See* Ex. D, Tr. of Proceedings (Dec. 7, 2018), at 85 (“And I [the Court] recognize that there may
7 be on the plaintiffs’ side some issue with respect to administrative record versus expanded
8 administrative record. And I understand how Judge Furman did it, and I think that makes some
9 sense.”).

10 In any event, although Defendants do not specify what extra-record evidence they seek to
11 exclude, evidence beyond the administrative record is relevant to Plaintiffs’ claims. As an initial
12 matter, extra-record evidence is relevant to establish Plaintiffs’ standing as well as in support of
13 the merits of their Enumeration Clause claim. *See Sierra Club v. E.P.A.*, 292 F.3d 895, 899–900
14 (D.C. Cir. 2002) (permitting plaintiffs to submit extra-record evidence to establish standing);
15 Order Den. Mots. for Summ. J. and Partial Summ. J. 3–7, 7–8 (finding material disputes of fact
16 on the issue of Plaintiffs’ standing and Plaintiffs’ Enumeration Clause claim based in part on the
17 introduction of evidence outside the administrative record).

18 With regard to the APA claim, although judicial review of an agency decision is normally
19 limited to the administrative record on which the agency based the challenged decision, *Lands*
20 *Council v. Powell*, 395 F.3d 1019, 1029 (9th Cir. 2005), extra-record materials are admissible
21 under the following circumstances: “(1) if admission is necessary to determine whether the
22 agency has considered all relevant factors and has explained its decision, (2) if the agency has
23 relied on documents not in the record, (3) when supplementing the record is necessary to explain
24 technical terms or complex subject matter, or (4) when plaintiffs make a showing of agency bad
25 faith.”⁴ *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t of*

26 ⁴ Although the Ninth Circuit has held that “extra-record evidence is admissible . . . if the
27 agency has relied on documents not in the record,” *Ranchers Cattlemen*, 499 F.3d at 1117, such
28 documents may not, in fact, be “extra-record” materials. As noted, the administrative record
consists of “all documents and materials directly or indirectly considered by agency decision-

1 *Agric.*, 499 F.3d 1108, 1117 (9th Cir. 2007). Plaintiffs already have discovered and presented to
 2 the Court evidence that some, if not all, of those circumstances are present in this case. *See*
 3 *generally* Pls.' Opp'n to Defs.' Mot. for Summ. J. (ECF No. 91). For example, Plaintiffs have
 4 presented intra- and extra-record evidence demonstrating that the decision to add the citizenship
 5 question was made in bad faith because the Secretary's stated rationale behind his decision was
 6 pretextual, *id.* at 15–18, and that the Secretary failed to consider all important factors and aspects
 7 of the decision to add the citizenship question, *id.* at 19–23. And, extra-record evidence may be
 8 necessary at trial to explain technical issues about the census, such as whether the Census Bureau
 9 followed its well-established procedures and processes for changing the content of the decennial
 10 census questionnaire.

11 In fact, even considering only the administrative record, this Court has found questions of
 12 fact as to whether the agency's decision was pretextual and whether the agency considered all
 13 important aspects of the problem. Order Den. Mots. for Summ. J. and Partial Summ. J. (ECF No.
 14 114), at 11-13. Because extra-record evidence may be necessary to resolve those factual issues,
 15 such evidence should be admissible at trial.⁵

16 For these reasons, evidence outside the administrative record is admissible and should not
 17 be excluded.

18 CONCLUSION

19 For the foregoing reasons, the Court should (1) deny Defendants' motion to exclude fact
 20 witnesses Amy Bodek and Andrew Westall; (2) admit the complete administrative record
 21 evidence; and (3) deny Defendants' motion to exclude evidence outside the administrative record.

22
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24
25 _____
 26 makers.'” *Thompson*, 885 F.2d at 555 (emphasis added). Therefore, any document an agency
 27 relied on may be admissible not as extra-record material, but rather, more simply, as part of the
 28 complete administrative record.

⁵ Plaintiffs intend to prove at trial that there are grounds for invalidating Defendants' decision under the APA based on the complete administrative record alone, and also prove that, in the alternative, the addition of extra-record evidence compels that finding as well.

1
2 Dated: December 28, 2018

Respectfully Submitted,

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FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), regarding signatures, I hereby attest that concurrence in the filing of this document has been obtained from all signatories above.

Dated: December 28, 2018

/s/ Todd Grabarsky
TODD GRABARSKY

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 15. Certificate of Service for Electronic Filing

9th Cir. Case Number(s) 3:18-cv-01865

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 28, 2018, at Sacramento, California.

Description of document(s) (*required for all documents*):

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION IN LIMINE

Cecilia Apodaca
Declarant

Cecilia Apodaca
Signature

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No.: 3:18-cv-01865-RS

**DECLARATION OF AMY BODEK ON
BEHALF OF THE COUNTY OF LOS
ANGELES**

Date: January 7, 2019

Time: 10:00 a.m.

Before: Hon. Richard Seeborg

Courtroom: 3

Holland & Knight LLP
 50 California Street, Suite 2800
 San Francisco, CA 94111
 Tel: (415) 743-6900
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1 I, Amy Bodek, hereby declare:

2 1. I am the Director of the Department of Regional Planning (“DRP”) of the County
 3 of Los Angeles (“the County”). I have been authorized by County Counsel to submit this
 4 Declaration on behalf of the County. Except as otherwise stated below, I have personal and
 5 professional knowledge of all facts contained in this Declaration, and if called upon to do so
 6 could testify competently to those facts under oath in a court of law, without waiver of any
 7 applicable privilege.

8 2. Before I was appointed to my current position in February of 2018, I was the
 9 Director of the Department of Development Services for the City of Long Beach, as well as the
 10 Executive Director for the Long Beach Redevelopment Agency, since 2010. I worked for the
 11 City of Long Beach in various planning capacities for over 24 years.

12 3. I hold a Bachelor of Science degree in Environmental Design from Cornell
 13 University, a Master of Urban Planning degree from New York University, and a certificate in
 14 Landscape Architecture from the University of California, Los Angeles.

15 4. As further described below, DRP relies on Census demographic information from
 16 two sources—(1) obtained directly from the Census, and (2) analyzed and provided by the
 17 Southern California Association of Governments (“SCAG”). Such information, including but
 18 not limited to age, employment, special needs, and housing characteristics, is critical to the
 19 primary functions of the Department, including the creation of the County’s General Plan,
 20 various area plans, and the development tools to ensure equitable development.

21 **General Plan**

22 5. My responsibilities include overseeing the County’s compliance with, and
 23 implementation of, its obligations under California’s Planning and Zoning Law (Cal.
 24 Government Code §§ 65000, *et seq.*) These obligations include the promulgation,
 25 implementation, and periodic updating of the County’s general plan pursuant to Government
 26 Code section 65300, which requires that: “Each planning agency shall prepare and the
 27 legislative body of each county and city shall adopt a comprehensive, long-term general plan for
 28

1 the physical development of the county or city, and or any land outside its boundaries which in
2 the agency's judgment bears relation to its planning."

3 6. The Los Angeles County 2035 General Plan (the "General Plan") serves as a
4 "blueprint" for how and where the unincorporated County will grow through the year 2035. It
5 is the guide for long-term physical development and conservation, by establishing goals,
6 policies and programs to foster health, livable and sustainable communities. The General Plan
7 includes the following elements: Land Use, Mobility, Air Quality, Conservation and Natural
8 Resources, Parks and Recreation, Noise, Safety, Public Services and Facilities, Economic
9 Development, and Housing. In 2017, the Legislature added (as § 65302, subd. (h)) a required
10 environmental justice element to address the unique burdens and needs of "disadvantaged
11 communities," as defined by law. Each of these elements is assessed across the unincorporated
12 areas of the County as a whole, as well as across eleven smaller planning areas (e.g. East San
13 Gabriel Valley, San Fernando Valley, Antelope Valley and Westside Planning Areas).

14 7. One element of the General Plan is the Housing Element, which is one of eight
15 required by the State. It serves as a policy guide to address the housing needs of the
16 unincorporated communities, and its main focus is to ensure safe, sanitary, and affordable
17 housing for Los Angeles County residents, including those with special needs. *See, e.g.*, "Los
18 Angeles County Housing Element, 2014-2021," available at
19 http://planning.lacounty.gov/assets/upl/project/housing_element.pdf ("Housing Element").

20 8. As part of the Housing Element, the County conducted a Housing Needs
21 Assessment to identify both available housing inventory and market trends that DRP will use to
22 shape housing policy for the unincorporated areas. The Needs Assessment includes a review,
23 not only of population, but also of demographic characteristics including age, race,
24 employment, housing characteristics, and special needs. *See, e.g.*, Housing Element.

25 9. Based on my experience heading the DRP, the decennial Census is the main
26 source of information for conducting the Housing Needs Assessment. The County does not rely
27 on the American Community Survey ("ACS") because ACS data is not sufficiently accurate or
28

granular. The ACS is a randomized sample of roughly three million people in the entire nation each year. Since the ACS data derives from a small sample set that is then extrapolated, it lacks the specific information the County needs to properly plan. Specifically, ACS data is not useful at the block group level, and Census data is. If DRP were to base its local data on that which is derived from such a small sample set, the County would have to make large assumptions regarding local trends. These assumptions would later cause significant financial and planning problems if they turned out to be false.

10. **Age.** DRP relies on the assessment of population characteristics such as age to identify the current and future need for types of housing. Younger residents typically seek smaller, affordable housing, while middle-aged residents will demand a variety of housing options. Senior residents are projected to need intermediate care and assisted living options. The County relies on accurate data regarding the age of its population—data that is derived almost entirely from the Census—to inform its planning with respect to each kind of housing. *See, e.g.,* Housing Element.

11. **Race and Ethnicity.** DRP also relies on the assessment of population characteristics such as race and ethnicity in its Housing Needs Assessment. Race and ethnicity Census data can potentially indicate housing demand given that certain cultures may prefer or be accustomed to living with extended family, and need larger housing units. *See, e.g.,* Housing Element.

12. **Special Needs.** DRP relies on the assessment of population characteristics such as special needs to identify the current and future need for types of housing. Residents with special needs (including seniors, farmworkers, single parent households, large households, the homeless, and persons with disabilities) face greater challenges when seeking available housing in light of the need for certain accommodations and/or retrofitting. *See, e.g.,* Housing Element.

13. **Household Population.** DRP also relies on Census data on substandard housing, overcrowding, and overpayment (i.e., percentage of income spent on rent) to assess the availability of appropriate, affordable housing in the County's unincorporated areas. Moreover,

1 knowing household populations is critical because higher density areas have special planning
 2 needs as they are more likely to need higher access to transit, have higher social service needs,
 3 and be sensitive to changes in rent or employment. The County can act to avoid these issues if
 4 and only if it has accurate Census data. If the County knows overcrowding is occurring, it can
 5 plan for (i.e., rezone) those areas in order to accommodate more people. If these same areas
 6 also lack transit, accurate information gives the County an opportunity to plan for new transit
 7 service or new employment areas. *See, e.g.,* Housing Element.

8 14. All of the above referenced demographic information and resulting analysis is
 9 made available to a variety of County departments. In response, these agencies develop
 10 programs and policies aimed at addressing the problems highlighted by the data.

11 15. I am aware that in prior years, the analysis of Census demographic data has
 12 resulted in the amendment of governmental constraints like the County Zoning Code, increased
 13 availability of public funds/project-based vouchers, development of affordable housing units,
 14 and the increased provision of rental assistance. Based on such analysis, public housing has
 15 been modernized and preservation options discussed with inhabitants of at-risk housing as well.
 16 *See, e.g.,* Housing Element, at Appendix C: Review of Past Accomplishments.

17 **Planning Areas**

18 16. The General Plan is the foundation for all community-based plans, such as area
 19 plans, community plans, and coastal land use plans. Area plans focus on land use and policy
 20 issues that are specific to a particular planning area.

21 17. The East San Gabriel Valley Area Plan will be the first area plan prepared under
 22 the Planning Area Framework. It is a long-range planning and policy document that will help
 23 guide growth and development for the unincorporated areas of the planning area. An area plan
 24 will be prepared or updated for each of the County's eleven planning areas. Like the General
 25 Plan, DRP relies on demographic information from the Census including the age, race,
 26 employment, and housing characteristics of the community to assess the need and plan for
 27 growth. *See, e.g.,* the "East San Gabriel Valley Area Plan," available at
 28

1 <http://planning.lacounty.gov/site/esgvap/>.

2 **Equitable Development**

3 18. On December 8, 2015, the County Board of Supervisors voted to implement the
 4 County General Plan in a way that would promote sustainable, healthy and well-designed
 5 environments, enhancing the quality of life and public well-being for all unincorporated
 6 residents. The Board instructed the Director of Regional Planning to work with other County
 7 departments to initiate an Equitable Development Work Program consisting, in part, of the
 8 development of tools to evaluate, monitor, and advance equity objectives in the General Plan's
 9 implementation. *See, e.g.*, Los Angeles County Board of Supervisors Motion entitled
 10 "Development and Implementation of Equitable Development Tools," available at
 11 <http://file.lacounty.gov/SDSInter/bos/supdocs/99751.pdf>.

12 19. In response to the Board's motion, DRP has been developing an Equity Indicators
 13 Tool, the purpose of which is to facilitate the use of equity as a factor in the County's decision-
 14 making. The Tool itself is a web-based mapping program that displays demographic
 15 information obtained from the Census either directly by DRP or indirectly via SCAG, to
 16 identify areas that are experiencing a greater degree of challenges. *See, e.g.*, DRP Report to the
 17 Los Angeles County Board of Supervisors entitled "Report on Board Motion Regarding the
 18 Equitable Development Work Program," available at
 19 http://planning.lacounty.gov/assets/upl/official/official_20181129-equity.pdf.

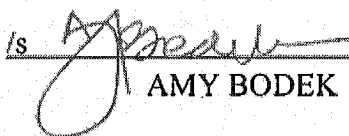
20 **Importance of Demographic Census Information to DRP and County Planning**

21 20. DRP relies heavily upon demographic Census information in carrying out its
 22 responsibilities under the Planning and Zoning Law, particularly since this information is
 23 available on a block-by-block (detailed) basis, which is essential for the County's planning
 24 purposes. Decennial census information is particularly important for DRP's purposes because it
 25 also forms the basis for measuring trends based on comparison with the previous Census.
 26 DRP's future projections for General Plan purposes will need to include comparisons between
 27 2010 and 2020 demographic Census figures.

1 21. Without the reliable and precise demographic Census information, DRP would
2 not be able to readily identify the unique needs of each community in formulating and
3 implementing the County's General Plan and its many elements. This lack of accurate data, in
4 turn, could result in long-term misallocations of County resources, impairing the County's
5 ability to balance the economic, social, environmental, and other goals set out in the Planning
6 and Zoning Law and the County's General Plan. Further, without reliable demographic Census
7 information, DRP would be unable to maintain the current level of assistance to other County
8 agencies charged with the responsibility of making policy or financial decisions in accordance
9 with California law and the County's Equitable Development programs and policies.

10 I declare under penalty of perjury under the laws of the United States that the foregoing is
11 true and correct, and that I have executed this declaration in Los Angeles, California.

12 Dated: December 27, 2018

13
14 _____
15 AMY BODEK
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CERTIFICATE OF SERVICE

Case Name: **State of California, et al. v.** No. **3:18-cv-01865**
Wilbur L. Ross, et al.

I hereby certify that on December 28, 2018, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DECLARATION OF AMY BODEK ON BEHALF OF THE COUNTY OF LOS ANGELES

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 28, 2018, at Sacramento, California.

Eileen A. Ennis

Declarant

/s/ Eileen A. Ennis

Signature

SA2018100904

EXHIBIT B

XAVIER BECERRA
Attorney General of California
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ANTHONY R. HAKL
Supervising Deputy Attorneys General
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*Attorneys for Plaintiff State of California, by and
through Attorney General Xavier Becerra*

(Additional counsel listed on following page)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**STATE OF CALIFORNIA, by and through
Attorney General Xavier Becerra;
COUNTY OF LOS ANGELES; CITY OF
LOS ANGELES; CITY OF FREMONT;
CITY OF LONG BEACH; CITY OF
OAKLAND; CITY OF STOCKTON,**

Plaintiffs,

v.

**WILBUR L. ROSS, JR., in his official
capacity as Secretary of the U.S.
Department of Commerce; U.S.
DEPARTMENT OF COMMERCE; RON
JARMIN, in his official capacity as Acting
Director of the U.S. Census Bureau; U.S.
CENSUS BUREAU; DOES 1-100,**

Defendants.

3:18-cv-01865

**TRIAL DECLARATION OF ANDREW J.
WESTALL**

Dept: 3
Judge: The Honorable Richard G.
Seeborg
Trial Date: January 7, 2019
Action Filed: March 26, 2018

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*Attorneys for Plaintiff-Intervenor
Los Angeles Unified School District*

1 I, Andrew J. Westall, do hereby declare as follows:

2 **Current Position:**

3 1. I am currently employed as the Assistant Chief Deputy for the Office of Los Angeles
4 City Council President Herb J. Wesson, Jr. I have held my current position from November 2005
5 through November 2011, and from April 2012 to the present.

6 2. Among other duties, in my current position as the Assistant Chief Deputy to Los
7 Angeles City Council President Herb J. Wesson, I lead a staff of up to 50 employees on a wide-
8 range of municipal issues, including intergovernmental relations, budget, revenue strategies,
9 ballot measures, labor, housing, planning, economic development, and transportation. As part of
10 my job duties as Assistant Chief Deputy, I have served as the lead staff member for the Rules,
11 Elections, and Intergovernmental Relations Committee from 2012 to the present. That committee
12 oversees the preparation for the Decennial Census for the City, as well as utilization of Decennial
13 Census data for redistricting for the City Council Districts and other purposes described herein. I
14 am the former lead staff member for the Housing, Community, and Economic Development
15 Committee. For six years in that capacity, I oversaw yearly operational budgets of approximately
16 \$2 billion in contracts and construction projects administered by the Housing Department,
17 Housing Authority, Community Development Department and the Community Redevelopment
18 Agency.

19 **Educational Background:**

20 3. I received a B.A. Degree in Political Science-Public Service from the University of
21 California, Davis in 1996, with an emphasis in urban, environmental, economic, and social public
22 policies, as well as various ethnic studies disciplines.

23 4. I received a M.A. Degree in Urban Planning from the University of California, Los
24 Angeles in 1999, with an emphasis in social policy and analysis, environmental and transportation
25 public policy, municipal demographics, Geographic Information System (GIS) mapping, and
26 redistricting.

27 **Political and Redistricting Experience:**

28 5. From April of 1998 through June of 2000, I worked for the National Association of

1 Latino Elected and Appointed Officials as a consultant, researcher and author. In June of 2000, I
2 prepared a publication entitled *Reapportionment, Redistricting and the Latino Community: 2000*
3 *and Beyond*, regarding reapportionment and redistricting of legislative and congressional districts
4 after the 2000 Census, focusing on the Latino communities in seven states.

5 6. From January 2001 to November of 2001, I worked as the Assistant to the Speaker
6 for the Office of the Speaker of the California Assembly Robert M. Hertzberg. In my role, I
7 worked on the post-2000 Census state redistricting process as the Chief Line Drawer for 38 of the
8 50 Democratic Assembly Districts in California. The Chief Line Drawer works with decision-
9 makers, legal counsel and key stakeholders in the crafting of proposed district lines to produce
10 draft maps and data tables for consideration, along with unpublished scenarios, leading ultimately
11 to the final map and data tables for publication. I also have performed work as the drafter of
12 alternative plans for the California Board of Equalization, California Legislature and United
13 States Congress. Alternative plans are unpublished redistricting maps and data table scenarios
14 made available to decision-makers, including State Legislators and Members of the U.S.
15 Congress.

16 7. From November 2001 to April of 2002, I served as the Technical Director for the City
17 of Los Angeles during the Los Angeles City Council redistricting process. In that capacity, I was
18 the Chief Line Drawer for the City Council Districts. I developed the demographic and
19 geographic databases utilized by the Commission and the public. These databases relied upon,
20 and were primarily based on, Decennial Census data. I also organized 16 public testimony
21 hearings throughout the City, which produced 3,000 attendees and 5,000 written public
22 comments. I reviewed and assessed the voluminous public record and prepared and provided
23 technical reports to the City. Additionally, I designed, developed, and updated the City's
24 redistricting website.

25 8. During that same period, from November 2001 to April 2002, I simultaneously
26 worked as the Technical Director and Chief Line Drawer for the Los Angeles Unified School
27 District (LAUSD) redistricting process.

28 9. From April of 2002 to February of 2004, I worked as Assistant to the Speaker for the

1 Office of the Speaker of the California Assembly Herb J. Wesson, Jr. My duties included
2 political marketing, public relations, electoral strategy, GIS mapping, demographics, statistics,
3 and redistricting.

4 10. From February 2004 to November of 2005, I worked as the Assistant to the Speaker
5 for the Office of the Speaker of the California Assembly Fabian Nunez. My duties included
6 political marketing, public relations, electoral strategy, GIS mapping, demographics, statistics,
7 and redistricting.

8 11. From November of 2011 to March 2012, I served as the Executive Director, Chief
9 Executive Officer and Administrator for the Los Angeles City Council Redistricting Commission,
10 overseeing six staff members and dozens of contractors in support of the Commission's work. I
11 organized 22 public testimony hearings throughout the City, with responsibility for managing a
12 process involving over 5,000 attendees and the assessment of 6,551 written public comments. I
13 also organized the Commission's meetings and prepared and issued a 950-page report to the City
14 Council regarding the Commission's recommendations for redistricting Los Angeles City Council
15 Districts after the 2010 Census.

16 12. Attached as **Exhibit A** to this Declaration is a true and correct copy of my complete
17 and current curriculum vitae (personal contact information redacted).

18 **Redistricting in the City of Los Angeles:**

19 13. The City of Los Angeles is a Charter City, organized under Article XI, Section 3 of
20 the California Constitution. Pursuant to Article XI, Section 5(b), the Charter of the City of Los
21 Angeles prescribes the manner in which redistricting will occur after each Decennial Census, and
22 relies upon the use of Census Data.

23 14. Section 204 of the Los Angeles City Charter requires a redistricting process every ten
24 years. Section 204(b) of the City Charter mandates the formation of a Redistricting Commission
25 to advise the City Council on the drawing of Council district lines. No City officer or employee
26 is eligible to serve on the 21-member Commission. Pursuant to Section 204(c) of the City
27 Charter, the Redistricting Commission must be appointed no later than "the date by which the
28 Census Bureau is to release decennial census data."

1 15. With regard to the redistricting process after the 2020 Decennial Census, Charter
2 Section 204(c) states that “The Commission shall begin the redistricting process at any time after
3 appointment, but no later than June 1st of 2021, and each subsequent tenth anniversary of that
4 date.”

5 16. Charter Section 204(c) further provides that the City Council “shall adopt a
6 redistricting ordinance no later than December 31, 2021, and each subsequent tenth anniversary
7 of that date.”

8 17. The first City election following the 2020 Decennial Census (the March 8, 2022
9 Primary Election) will be consolidated statutorily and contractually with the State Primary
10 Election conducted locally by the Los Angeles County Registrar-Recorder/County Clerk. The
11 Los Angeles County Registrar-Recorder/County Clerk has informed the City of Los Angeles that
12 redistricting of Council District boundaries following the 2020 census must be completed and
13 delivered to the County no later than October 6, 2021, so that the new district lines may be
14 implemented in time for the 2022 election cycle.

15 **Principles Applicable to the Redistricting Process:**

16 18. During my work on redistricting for more than a decade, beginning in 2001, for the
17 State of California, City of Los Angeles and LAUSD, I have gained an understanding of the legal
18 and practical considerations relevant to the redistricting process. These principles include the
19 following: (a) ensuring districts contain equal population in compliance with the Equal Protection
20 Clause of the Fourteenth Amendment to the United States Constitution; (b) respecting traditional
21 redistricting criteria such as contiguity (all parts of a district should connect), compactness (a
22 district should be geographically compact with regard to appearance, shape, and borders), due
23 consideration of existing boundaries (such as geographic, street, school, and political
24 subdivisions), and preserving communities of interest (people sharing common interest); and (c)
25 compliance with Section 2 of the federal Voting Rights Act by ensuring that minority voters are
26 not denied equal access to voting opportunities (minority voting blocks are neither fractured nor
27 packed into a district so as to dilute their votes).

1 19. Section 21620 of the California Elections Code allows the City Council to give
2 consideration in redistricting to topography, geography, cohesiveness, contiguity, integrity,
3 compactness of territory, and communities of interest within the district. Section 204(d) of the
4 City Charter requires that all districts “shall be drawn in conformance with requirements of state
5 and federal law and, to the extent feasible, shall keep neighborhoods and communities intact,
6 utilize natural boundaries or street lines, and be geographically compact.”

7 20. Section 204(a) of the City Charter requires that City Council Districts “shall each
8 contain, as nearly as practicable, equal portions of the total population of the City as shown by the
9 Federal Census immediately preceding the formation of districts.” Thus, the City conducts
10 redistricting based on the total population of the City, as it is constitutionally entitled to do under
11 Supreme Court precedent.

12 21. Pursuant to Section 241 of the City Charter, the City Council consists of 15 members,
13 elected by their respective districts.

14 22. Based upon the 2010 Decennial Census figures, the total population of the City of
15 Los Angeles was 3,792,621. Therefore, the ideal population size for each Council District would
16 be 252,841 people. Both law and equity disfavor large population deviations between districts.
17 Even a deviation of 10% (5% in either a plus or minus direction) may not be considered in a “safe
18 harbor” for purposes of a legal challenge.

19 23. As a result of the 2012 redistricting process, each Council District represents a
20 population of approximately 250,000 residents, with a population deviation of less than +/- 2.5%.
21 Equal distribution of residents in each Council District ensures that every resident has equal
22 access to their City government representative.

23 **Importance of Decennial Census Data for Redistricting:**

24 24. During my redistricting work over more than a decade, I have become familiar with
25 and have relied upon Decennial Census data to perform my work. The Decennial Census is the
26 only source that provides the sufficiently granular population count and demographic data the
27 City of Los Angeles needs for redistricting purposes.
28

1 25. The Decennial Census provides important data points that the City uses in
2 redistricting such as the number of people per household, household status, age, race, and
3 ethnicity.

4 26. The Decennial Census also provides data on multiple levels that are crucial for
5 redistricting: a “Census block”; a “Census Block Group” or “Census Tract” level (comprising
6 several groups of blocks, averaging approximately 5,000 individuals); “Census Place”
7 (unincorporated County); and at an overall City, County and State level.

8 27. The City uses granular population count data when redistricting to create Council
9 Districts that are of equal size in terms of resident population. Without accurate population count
10 data from the Decennial Census, the City cannot ensure that any redistricting plan complies with
11 constitutional, state, and Charter provisions that require Council Districts be of equal size and
12 conforms to such redistricting principles as contiguity and compactness.

13 28. Data at all levels of granularity, including the most granular block-level, is necessary
14 to ensure properly populated and lawfully formed City Council Districts. Neighborhood
15 characteristics and population density can change dramatically in Los Angeles from block-to-
16 block, especially near the City’s core. For example, single family neighborhoods such as
17 Hancock Park, with average lot sizes of approximately 14,000 square feet, abut very densely
18 populated portions of Koreatown, filled with multi-family residences and notable for having one
19 of the densest populations in the United States outside of New York City.

20 29. Inaccurate population count data will thus result in an unevenly reported population
21 distribution, which will in turn deny equal representation to the City’s residents. According to
22 data from the Census Bureau, of the nearly 3.95 million residents in the City of Los Angeles,
23 approximately 37.6% are foreign born ([https://www.census.gov/quickfacts/](https://www.census.gov/quickfacts/losangelescalitycalifornia)
24 [losangelescalitycalifornia](https://www.census.gov/quickfacts/losangelescalitycalifornia)), a population of foreign-born residents greater than the entire population
25 of twelve states with the lowest population in the United States (Alaska, Delaware, Hawaii,
26 Maine, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, Vermont, and
27 Wyoming (<https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html>)).
28 Non-citizen residents in the City of Los Angeles are not distributed equally among neighborhoods

1 or the 15 Council Districts. For example, in Council District 9, 50% of residents over the age of
2 18 are non-citizens, compared with just 13.9% in Council District 5.

3 30. Accordingly, residents in Council Districts with large concentrations of undercounted
4 residents would be denied equal representation. Residents in Districts with larger undercounted
5 populations would proportionally have less access to their elected representative, denying them an
6 equal ability to petition their government for redress of grievances as guaranteed by the First
7 Amendment. The residents of those Districts with more undercounted neighbors would be denied
8 equal access merely because of where they happen to reside and who their neighbors happen to
9 be.

10 31. The City also uses granular race and ethnicity data gathered from the Decennial
11 Census when redistricting to ensure compliance with the Voting Rights Act and other state and
12 federal voting and civil rights laws. Accurate data on race and ethnicity at the block-level is
13 necessary given that population density and demographic diversity can vary sharply among
14 adjacent neighborhoods and abutting city blocks in Los Angeles. Without accurate block-level
15 race and ethnicity data, the City cannot ensure that district lines are drawn in compliance with the
16 Voting Rights Act and other voting and civil rights laws.

17 32. Block-level demographic data is also necessary for drawing district lines and
18 determining the precise neighborhoods that will be included in particular districts in accordance
19 with the principles of redistricting. As noted, preserving communities of interest is one of the
20 principles the City must consider during redistricting. Block-level demographic data, including
21 age, race and household status, is crucial for identifying those communities of interest and
22 locating their precise geographic bounds.

23 **Importance of Decennial Census Data for the Allocation of City Services and**
24 **Resources:**

25 33. The City also relies on Decennial Census population count data when managing the
26 allocation of its services and resources to City residents.

27 34. City services and resources that are allocated to particular neighborhoods are based
28 on the Decennial Census count of people in those neighborhoods. Due to the highly varying

1 nature of the population density from one neighborhood to the next, and even from one block to
2 the next, the granular block-level population count data derived from the Decennial Census is
3 crucial for properly and efficiently allocating City services and resources to ensure that the needs
4 of each neighborhood—and, even, each block—are met.

5 35. Without reliable, precise, and accurate population count data, the City would not be
6 able to identify the needs of each community, neighborhood, or high-density city block. The
7 combination of undercounts in some neighborhoods and overcounts in others will lead to errors in
8 measuring neighborhood populations, which will in turn lead to misallocation of City resources.

9 36. The services that the City provides to its residents are without regard to whether the
10 resident is a citizen or non-citizen. For example, members of the Los Angeles Police Department
11 respond to any call for assistance; members of the Los Angeles Fire Department do not ask for
12 proof of citizenship before rendering emergency services or extinguishing fires; and the City's
13 Bureau of Sanitation picks up trash for all residents, regardless of their immigration or citizenship
14 status. Accordingly, undercounted neighborhoods will suffer from the lack of sufficiently
15 allocated resources due to inaccurate census data. The City thus needs accurate Decennial Census
16 data to meet the needs of all of its residents and to plan for future needs.

17 37. Having an accurate neighborhood-by-neighborhood and block-by-block population
18 count is also important in such areas as the City's Department of City Planning (for urban
19 planning and zoning updates), the City's Department of Transportation (for infrastructure project
20 assessments), the City's Economic Workforce and Development Department (for redevelopment
21 purposes), and by the Housing and Community Investment Department (for smart growth
22 analyses).

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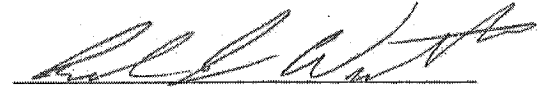
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1 I declare under penalty of perjury under the laws of the United States and the State of
2 California that the foregoing is true and correct to the best of my knowledge, and that I have
3 executed this declaration in Los Angeles, California.

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5 Dated: December 27th, 2018



6 Andrew J. Westall
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EXHIBIT A

Andrew J. Westall

[REDACTED]

[REDACTED]

[REDACTED]

Professional Experience

Office of Los Angeles City Council President Herb J. Wesson, Jr.

Assistant Chief Deputy

November 2005 to November 2011

April 2012 to Present

Lead staff member for the City Council managing teams of up to 50 employees on the issues of intergovernmental relations, budget, revenue strategies, ballot measures, labor, housing, planning, economic development, cannabis, and transportation in the City of Los Angeles; lead staff member for the Rules, Elections, and Intergovernmental Relations Committee since 2012, the Ad Hoc Committee on the 2028 Olympics and Paralympic Games, the Ad Hoc Committee on Police Reform, and the Board of Referred Powers chaired by the Council President; former lead staffer for six years overseeing the management, organization, and publication of the City Council agendas three times a week; former lead staff member for the Housing, Community, and Economic Development Committee chaired by the Councilmember for six years overseeing \$2 billion yearly in operational budgets, contracts, and construction projects by the Housing Department, Housing Authority, Community Development Department, and the Community Redevelopment Agency.

Los Angeles City Council Redistricting Commission

Executive Director

November 2011 to March 2012

Chief Executive Officer and Administrator for the City of Los Angeles City Council Redistricting process overseeing six staff and dozens of contractors during the Commission's work; organized twenty-two public testimony hearings from San Pedro to Sunland-Tujunga with more than 5,000 attendees and 6,551 written public comments, not including regular and special Commission meetings; issued 950 page report to the City Council on time and under budget.

Pasadena City College

Adjunct Faculty

January 2003 to May 2010

Part-time professor of Political Science and American Institutions providing instruction and mentorship to approximately two-thousand students, two to three nights a week, with an average class size of fifty.

Office of Speaker of the Assembly Fabian Nuñez

Assistant to the Speaker

February 2004 to November 2005

Staff member in the areas of political marketing, public relations, electoral strategy, GIS mapping, demographics, statistics, and redistricting; organized Assembly committee hearings and town hall meetings throughout Southern California providing logistics, public outreach, and technical support.

Office of Speaker of the Assembly Herb J. Wesson, Jr.

Assistant to the Speaker

April 2002 to February 2004

Staff member in the areas of political marketing, public relations, electoral strategy, GIS mapping, demographics, statistics, and redistricting; organized Assembly committee hearings and town hall meetings throughout Southern California providing logistics, public outreach, and technical support.

City of Los Angeles Redistricting Commission for the LAUSD

Technical Director

November 2001 to April 2002

Consultant for LAUSD redistricting process; Chief line drawer for the LAUSD Board of Education districts.

ANDREW J. WESTALL

Los Angeles City Council Redistricting Commission

Technical Director

November 2001 to April 2002

Consultant for City of Los Angeles City Council redistricting process; Chief line drawer for the City Council districts; organized 16 public testimony hearings from Watts to Pacoima with more than 3,000 attendees and over 5,000 written public comments; submitted technical reports and maintained website design, development, and updating.

Office of Speaker of the Assembly Robert M. Hertzberg

Assistant to the Speaker

January 2001 to November 2001

Staff member for State Assembly redistricting process; Chief line drawer for 38 of the 50 Democratic Assembly districts in California, as well as drafter of alternative plans for the Board of Equalization, State Senate, and House of Representatives; frequent weekly travel to Sacramento, including the entire final month of the legislative session; provided guidance and negotiated between various state legislators and legislative caucuses with respect to district boundaries.

Office of Speaker of the Assembly Robert M. Hertzberg

Field Representative

March 1999 to December 2000

Staff member and representative for the Speaker to community events, forums, meetings, and other policy discussions in the areas of transportation, the environment, water, health care, land use, and other issues affecting the San Fernando Valley; lead staffer for the summer intern program overseeing twenty-plus interns in each of two consecutive summers; programmer and developer of filing systems, phone logs, and phone books for the Speaker.

National Association of Latino Elected and Appointed Officials

Consultant

April 1998 to June 2000

Researcher and author of publication on reapportionment and redistricting of legislative and congressional districts after the 2000 Census, emphasizing the Latino community in seven states; Presenter and panelist at the NALEO national conference in 2000, the Orange County Business Council, and the National Hispanic Caucus of State Legislators national conference in 2001.

Graduate Students Association, UCLA

President

May 1997 to June 1998

Chief Executive and Financial Officer for the official student government of approximately 10,000 graduate and professional students; elected position; author of numerous editorials; successfully advocated for new graduate student housing near campus and free ridership for students on the Santa Monica Big Blue Bus.

Office of Assemblymember Deborah V. Ortiz

Legislative Aide

June 1997 to September 1997

Staff member and policy analyst for the Assemblymember on issues of foster care and child abuse in Sacramento County; coordinator of taskforce to reinforce the continuum of care for children to end the increase in child deaths from parental abuse.

Office of Assistant Secretary Andrew M. Cuomo

Intern

September 1995 to December 1995

Intern and policy analyst for the U.S. Department of Housing and Urban Development's Department of Community Planning and Development on empowerment communities and enterprise zones; liaison to numerous cities and counties collecting data; provided annual and periodic reports and presentations on behalf of the Assistant Secretary to congressional offices and the White House.

ANDREW J. WESTALL

Education

M.A. Degree, *Urban Planning*, **UCLA**, 1999

Emphasis in social policy and analysis, environmental and transportation public policy, municipal finance, demographics, GIS mapping, and redistricting.

Advisors: Dr. Leobardo Estrada and Dr. J. Eugene Grigsby, III

B.A. Degree, *Political Science-Public Service*, **University of California, Davis**, 1996

Emphasis in urban, environmental, economic, and social public policy, as well as various ethnic studies disciplines.

Current Community Work and Affiliations

- *Member*, **UCLA Alumni Association**
- *Member*, **UC Davis Alumni Association**

Publications

- *Author*, "Election Irregularities are Fault of City Clerk", **Glendale News-Press**, April 16, 2003.
- *Author*, Reapportionment, Redistricting and the Latino Community: 2000 and Beyond, **National Association of Latino Elected and Appointed Officials**, June, 2000.
- *Columnist*, **The Daily Bruin**, Winter 1997.
- *Author*, "Democracy Calls for Active Participation", **The Daily Bruin**, Tues. Oct 22, 1996.
- *Co-Editor*, State Enterprise Zone Update, Department of Community Planning and Development, U.S. Department of Housing and Urban Development, 1996.
- *Author*, "Film Creates Desire to Change", **The California Aggie**, Davis, CA, Mon. Jan. 23, 1995.

Past Community Work and Affiliations

- *Member*, **Board of Directors, Exposition Metro Line Construction Authority**, 2014-2018.
- *Member*, **Los Angeles County Commission on Local Governmental Services**, 2011-2015.
- *Alternate Member*, **Board of Directors, Expo. Metro Line Construction Authority**, 2007-2014.
- *President*, **Greater Toluca Lake Neighborhood Council**, 2012-2013
- *Vice President*, **Greater Toluca Lake Neighborhood Council**, 2011-2012; 2013-2014.
- *Member*, **Pasadena City College Faculty Association**, 2007-2011.
- *Member*, **California Teacher's Association/CCA, Pasadena Chapter**, 2003-2007.
- *Member*, **Los Feliz Improvement Association**, 2000-2007.
- *Member*, **Los Angeles President's Joint Commission on LAUSD Governance**, 2005-2006.
- *Secretary*, **Greater Griffith Park Neighborhood Council**, 2003-2004.
- *Member*, **UCLA Alumni Association Leadership Academy**, 2003-2004.
- *Vice President*, **Greater Griffith Park Neighborhood Council**, 2002-2003.
- *External Vice President*, **Mira Hershey/Hilgard Residents Association**, UCLA, 1997.
- *Advisor*, **Sacramento County Adult and Aging Commission**, 1996.
- *President*, **Chi Phi Fraternity, Sigma Delta Chapter**, UC Davis, 1995.

EXHIBIT C

IB15staC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 STATE OF NEW YORK, et al.,

4 Plaintiffs,

5 v.

18 Civ. 2921 (JMF)

6 UNITED STATES DEPARTMENT OF
7 COMMERCE, et al.,

Conference

8 Defendants.

9
10 -----x
11 NEW YORK IMMIGRATION
12 COALITION, et al.,

13 Plaintiffs,

14 v.

18 Civ. 5025 (JMF)

15 UNITED STATES DEPARTMENT OF
16 COMMERCE, et al.,

17 Defendants.

18 -----x
19
20 New York, N.Y.
November 1, 2018
11:15 a.m.

21 Before:

22 HON. JESSE M. FURMAN,

23 District Judge

IB15staC

APPEARANCES

NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL
Attorneys for Plaintiffs

BY: MATTHEW COLANGELO
ELENA S. GOLDSTEIN

- and -

ARNOLD & PORTER KAYE SCHOLER

BY: DAVID P. GERSCH
JOHN A. FREEDMAN

- and -

AMERICAN CIVIL LIBERTIES UNION FOUNDATION(DC)

BY: DALE E. HO

UNITED STATES DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch

Attorneys for Defendants

BY: KATE BAILEY
CAROL FEDERIGHI
CARLOTTA A. WELLS

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1 THE COURT: Okay. So, why don't I tentatively admit
2 everything through 13,099 and you can talk to them and if you
3 think there is an application to be made to withdraw something
4 from the administrative record I will put the onus on you to
5 make the application.

6 MS. FEDERIGHI: That's fair enough.

7 THE COURT: So, AR 1 through 13,099 are admitted,
8 without objection.

9 Beyond that, think we already discussed how to proceed
10 if plaintiffs believe that there are documents that should be
11 part of the administrative record that were not filed as part
12 of the administrative record, namely you should identify those
13 with specificity, confer with defense counsel. If you are in
14 agreement that something should be designated to be part of the
15 administrative record, great, and if not I would think that
16 that should be the subject of a separate motion. I don't
17 particularly want piecemeal litigation about that so I think it
18 makes sense to file one motion with respect to any documents
19 that are in dispute and to do so, certainly before the close of
20 trial, if there is a trial so that everybody understands what
21 is and isn't part of the administrative record before you file
22 your post-trial briefs. But, why don't you confer about that
23 as soon as you can so we can resolve any disagreements in a
24 timely fashion.

25 The second argument made by defendants is the

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1 exclusion of "irrelevant evidence." Suffice it to say, between
2 the argument or the reasoning in my opinion of last week and
3 what I said a few minutes ago with respect to the due process
4 claim, I am somewhat skeptical but I do think that that is the
5 heart of the parties' dispute, the heart of the issue that is
6 now pending before the Supreme Court and an important issue and
7 for that reason I will reserve judgment on it, which is another
8 way of saying that I will certainly tentatively -- I think
9 there is a distinction to be made, and I think I tried to draw
10 this in my opinion last week, between admitting evidence so
11 that it is part of the record and then considering that
12 evidence. In my view, particularly given the press of time,
13 given that the last thing that anybody wants is a remand from a
14 higher court because I didn't consider something that I should
15 have, I think it makes sense to make the record as
16 comprehensive as possible and then to differentiate with
17 respect to what can and can't be considered.

18 So, I guess on that score I will allow the evidence to
19 be admitted at trial, whatever that means, but I will reserve
20 judgment on whether and to what extent I can or should consider
21 that evidence. Having said that, there is one thing referenced
22 in that motion that I did want to flag which is that there is a
23 suggestion in the government's brief that one or more of the
24 plaintiff's experts may be offering an opinion on an ultimate
25 decision in the case, for example, that Secretary Ross'

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1 decision is not supported by the administrative record. I am
2 inclined to agree with the government that any such testimony
3 would be improper as it would intrude on my role as a fact
4 finder in this matter but I think that the remedy for that or
5 the proper procedure for that is for defendants to raise an
6 objection to the question or answer that would elicit that
7 testimony rather than an ex-ante preclusion order. I just
8 wanted to flag that as something that I think has potential
9 merit.

10 Turning to the third and final issue raised in
11 defendant's motion, this is the motion to disqualify
12 plaintiff's expert Dr. Lisa Handley. That motion is denied
13 substantially for the reasons set forth in plaintiff's
14 opposition. First, as a procedural matter, I am not going to
15 countenance what sure seems to me like an effort to sandbag
16 Dr. Handley, as I understand it, was disclosed to defendants
17 two months ago. They had ample opportunity to raise the issue
18 with plaintiffs and, if necessary, with me and to depose her in
19 an effort to determine whether there was any bona fide issue
20 here whether she was actually relying on any confidential
21 information. Having failed to do those things and having
22 failed to file their motion by the deadline for summary
23 judgment as required by my individual rules, I will not
24 entertain the application now. In any event, even if I did, I
25 would deny it on the merits. The Department of Justice, for

EXHIBIT D

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE RICHARD SEEBORG, JUDGE

STATE OF CALIFORNIA, et al.,)	
)	
Plaintiffs,)	
VS.)	NO. C 18-01865 RS
)	
WILBUR ROSS, JR., et al,)	
)	
Defendants.)	
_____)	
CITY OF SAN JOSE, et al.,)	
)	
Plaintiffs,)	
VS.)	NO. C 18-02279 RS
)	
WILBUR ROSS, JR., et al.,)	
)	San Francisco, California
Defendants.)	
_____)	

Friday, December 7, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff State of California:

OFFICE OF THE ATTORNEY GENERAL
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Sacramento, California 95814

BY: R. MATTHEW WISE, ESQ.
GABRIELLE D. BOUTIN, ESQ.
DEPUTY ATTORNEYS GENERAL

Reported By: **BELLE BALL, CSR 8785, CRR, RDR**
Official Reporter, U.S. District Court

(Appearances continued, next page)

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For Plaintiff Los Angeles Unified School District:

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For Plaintiff City of Oakland:

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BY: MALIA MCPHERSON, ESQ.

For Plaintiff County of Los Angeles:

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For Plaintiffs City of San Jose and the Black Alliance for Just Immigration:

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(Appearances continued, next page)

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For Defendant:

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BY: MARTIN M. TOMLINSON, ESQ.

U.S. DEPARTMENT OF JUSTICE
20 Massachusetts Avenue, NW
Washington, D.C. 20530

BY: CARLOTTA P. WELLS, ESQ.

1 Looking at the New York trial, there were a couple of
2 different processes that we observed, and we're not sure if
3 they would apply in this case.

4 For example, there were not opening statements in
5 New York. The closing statements were really an oral argument.

6 **THE COURT:** Yeah.

7 **MR. WISE:** A couple weeks after.

8 **THE COURT:** I saw -- I think Judge Furman had a bit
9 of a delay between the end of the evidentiary period and the
10 argument. I didn't know if the parties had asked for that, or
11 if he had done that.

12 I don't --

13 **MS. WELLS:** That was at his -- it was his intent. We
14 didn't do openings there. And what we did was we submitted
15 post -- and we didn't do -- we did do pretrial findings of
16 fact and conclusions of law. But we had not briefed summary
17 judgment in that case.

18 **THE COURT:** Oh, I see.

19 **MS. WELLS:** And then after trial we did post-trial
20 findings of fact and conclusions of law. And that was the
21 delay. And then he had the argument after those were
22 submitted.

23 **THE COURT:** I see. Well, you'll see from my standing
24 order on bench trial preparation, the usual way I operate is
25 to ask for preliminary findings and conclusions by both sides.

1 But then I give you an opportunity, depending on how the trial
2 record develops, to then give me either an amended or expanded
3 or contracted proposed findings and conclusions. So there's
4 preliminary, and then there's final.

5 Now, whether or not I time that in conjunction with any
6 final argument we can talk about on the 2nd, and see how we
7 want to do it. But I do want, if for no other reason than that
8 it's a very useful almost checklist for me, to have the
9 preliminary findings and conclusions.

10 And I recognize that there may be on the plaintiffs' side
11 some issue with respect to administrative record versus
12 expanded administrative record. And I understand how
13 Judge Furman did it, and I think that makes some sense.

14 But on the question of opening argument, I mean, if I got
15 a request from you to have a brief opening argument, I suppose
16 -- I'm not sure I would be averse to that.

17 At the same time, I think maybe -- unlike Judge Furman's
18 case because we have had summary judgment and I've been through
19 a full and very helpful motion hear on the motion to though
20 dismiss, now a very full and helpful motion hearing on summary
21 judgment, from my perspective, I'm not sure I need it, frankly.
22 I would like to just get into the trial.

23 But if somebody feels strongly that they think I would
24 benefit from some opening, I would consider it. I'm not asking
25 for it, is the bottom line.